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WENNER v. GEORGE et al.

March 17, 1921.

[106 S. E. 365]

1. Wills (§ 656*)—Whether a Condition Is Subsequent or Precedent Is Not Determinable by Technical Words Used.—There are no technical words to distinguish between conditions precedent and conditions subsequent; the distinction being a matter of construction.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 842.]

2. Wills (§ 823*)—Devisee Accepting Life Estate Held Personally Liable to Pay Charge Imposed.—Where testator devised lands to his son for life with remainders over on condition that the son should pay his sister the sum of \$4,000 within 10 years, interest to commence five years from the probate of the will, which further declared that any legatee who signified his intention not to abide by its provisions should forfeit any benefits, the son who accepted the life estate becomes personally liable for payment of the charge.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 838, 839.]

3. Wills (§ 821 (6)*)—Life Estate Held Subject to Lien to Secure Payment of Charge, but Remainder Not.—Where testator devised land to his son for life, provided the son should pay to his sister a fixed sum of money, and the will further provided that any beneficiary not accepting the conditions should forfeit all interest under the will, the son who accepted the life estate became not only personally bound to pay the charge, but the life estate itself was subject to the lien of the charge, though the remainders over were not.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 842.]

Appeal from Circuit Court, Loudoun County.

Bill by Leah Elizabeth Wenner against Ashland C. George and others. From the decree complainant appeals, and the named defendant appeals. Amended and affirmed.

Wm. H. Martin, of Leesburg, for appellant.

E. E. Garrett, of Leesburg, and *M. J. Fulton*, of Richmond, for appellee.

COMMONWEALTH v. KERNOCHAN.

March 17, 1921.

[106 S. E. 367.]

1. Taxation (§ 93 (1)*)—Intangible Property of Nonresident Insane Person May Not Be Taxed.—The commonwealth cannot recover al-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

leged omitted taxes on intangible property of an insane person where the domicile of such person was in another state.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

2. Taxation (§ 93 (1)*)—Domicile, Not Residence, Fixes Situs of Intangible Personal Property.—Domicile, as distinguished from residence, in the more ordinary and usual sense fixes the situs for the taxation of intangible personal property.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

3. Taxation (§ 320*)—Burden of Proving Change of Domicile of Owner of Intangible Property upon the Party Alleging It.—In a proceeding to tax the intangible personal property of an insane person, the burden of proving the change of domicile from another state to this is upon the plaintiff, commonwealth, alleging it.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 115.]

4. Domicile (§ 4 (2)*)—Mental Capacity Requisite to Change Domicile.—Where an insane person's domicile was clearly in New York at the time of her commitment to a hospital in Virginia, her domicile remained in the former state, notwithstanding her presence in the other, unless changed by some competent or authorized person or tribunal, since she lacked the mental capacity to make such change.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 116.]

5. Domicile (§ 4 (2)*)—That of Insane Person Must Be Changed by Committee or Courts.—Any person to change the domicile of an insane person, which must be independent of such person's own will, must be found in her committee or the courts having jurisdiction of her person.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 686.]

6. Domicile (§ 5*)—Guardian Who Is Not Parent Cannot Change Domicile.—A guardian or committee of an insane person other than one occupying the position of a parent has not power to change his ward's domicile from one state to another.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 114.]

7. Taxation (§ 320*)—Whether Intangible Estate of Nonresident Insane Person Should Be Taxed Depends on the Rights of the Forum State Alone.—In a proceeding to tax the intangible property of an insane person domiciled in another state but residing in this, the question for decision is, not whether the other state has been wrongfully deprived of taxes upon the estate, but whether this state has a right to claim and collect the tax.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 78.]

Appeal from Circuit Court of City of Williamsburg and County of James City.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Action by the Commonwealth of Virginia against J. Frederick Kernochan, committee of Marie Marshall, an insane person, for collection of taxes on intangible property. Judgment for defendant, and the Commonwealth appeals. Affirmed.

Jno. R. Saunders, Atty. Gen., S. O. Bland, of Newport News, and *Frank Armistead*, of Williamsburg, for the Commonwealth.

Miller & Miller and *Meredith & Meredith*, all of Richmond, for defendant in error.

MANN *v.* CITY OF LYNCHBURG.

March 17, 1921.

[106 S. E. 371.]

1. Master and Servant (§ 364*)—City and Not State Employer of Policeman.—If a policeman is an employee, within the Workmen's Compensation Act, the city, as the party using his services for pay, and not the state, is liable for benefits.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 727.]

2. Master and Servant (§ 417 (5)*)—Compensation Case Fully Determined in Public Interest, though Submitted on Limited Certification.—The question whether a policeman is an employee within the protection of the Workmen's Compensation Act will be determined as one of a public nature, though the case is submitted to the Supreme Court of Appeals on a limited certification, presenting merely the employer

3. Municipal Corporations (§ 186 (1)*)—Policeman Is a "Public Officer."—A policeman is a "public officer," and the compensation he receives is an incident to the office.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Officer. For other cases, see 10 Va.-W. Va. Enc. Dig. 199.]

4. Master and Servant (§ 364*)—Policeman Not within Compensation Act Defining "Employers" and Employees.—Under Workmen's Compensation Act, § 2, declaring in subdivision (a) that "employers" shall include the state or any municipal corporation, and in subdivision (b) that the term "employees" shall include every person in the service of another under any contract of hire, the relation of employer and employee does not exist between a municipality and a policeman, so as to create a liability for benefits, for a policeman is a public officer.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Employee; Employer.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.